

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JERRY HOOKS,

Plaintiff,

v.

BRUCE BANNISTER,

Defendants.

3:12-cv-00682-RCJ-WGC

**REPORT & RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE**

Re: Doc. # 102

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4. Before the court is Plaintiff's Motion to Have Exhibits Struck, Pretrial Memorandum & § 1623 Request for Partial Judgment. (Doc. # 102.)<sup>1</sup> Defendants filed a response (Doc. # 105) and Plaintiff filed a reply (Doc. # 115.)

**I. BACKGROUND**

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC), proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Am. Compl., Doc. # 14.) The events giving rise to this action took place while Plaintiff was housed at Ely State Prison (ESP). (*Id.*) Defendants are Dr. Michael Koehn, Angela Gregerson, Gail Holmes, Steven Smith, Bruce Bannister, Harold Byrne, James Cox, Boss, Renee Baker, Sheryl Foster, and Michael Cruse. (Screening Order, Doc. # 35.)<sup>2</sup>

<sup>1</sup> Refers to court's docket number.

<sup>2</sup> Service was never accepted on behalf of Boss and it does not appear that Plaintiff has served him to date; therefore, the court has concurrently issued a recommendation that the District Judge issue a notice of intent to dismiss pursuant to Federal Rule of Civil Procedure 4(m) for failure to serve Boss within 120 days of filing the amended complaint.

1 Plaintiff was allowed to proceed with Eighth Amendment deliberate indifference to  
2 serious medical needs claims against Dr. Koehn, Gregerson, Holmes, Smith, Bannister, Byrne,  
3 Cox, Boss, Baker and Foster, as well as retaliation claims against Dr. Koehn, Gregerson and  
4 Holmes asserted in Counts III, VII and IX, based on the following allegations:

5 Plaintiff claims that Dr. Koehn confiscated his “keep-on-person” (KOP) medications,  
6 including those for hypertension and severe, chronic back disorders and threatened to  
7 discontinue all of his medications if he “continu[ed] to play lawyer.” Nurses Gregerson and  
8 Holmes allegedly failed to administer one part of Plaintiff’s drug regimen or another in  
9 retaliation for his lawsuit. Plaintiff suffered heart palpitations, headaches and chest pain as a  
10 result. Boss allegedly ignored an emergency grievance of which he was aware for three hours  
11 while Plaintiff gasped for breath and suffered chest pain. Plaintiff asserts he was finally taken to  
12 the infirmary and admitted and treated for ten days for an irregular heart rhythm. Nursing  
13 Assistant Steve Smith allegedly conspired with his supervisors to discontinue Plaintiff’s  
14 treatment. Plaintiff claims he suffered chest pain, headaches, and severe anxiety attacks for two  
15 months. Defendants Baker, Foster, Byrne, and Bannister allegedly denied grievances about the  
16 lack of treatment. Plaintiff also alleges that Dr. Koehn later discontinued heart medications and  
17 let Plaintiff suffer with agonizing tooth pain for thirty days. Dr. Koehn ordered officers to  
18 confiscate all Plaintiff’s prescriptions and had him placed in an isolation cell for a day; then later  
19 discontinued Plaintiff’s medications for two months, and then six months later discontinued his  
20 medications for another two months causing chest pain and anxiety. He alleges that Baker,  
21 Bannister and Cox denied his grievances about the discontinuation of his medications. (Doc. # 35  
22 at 8-11.)

23 Plaintiff was also allowed to proceed with a retaliation claim against Cruse in Count V  
24 based on the allegation that Cruse prevented Plaintiff from getting certain personal property  
25 when he was transferred to ESP, in retaliation for his litigation. (Doc. # 35 at 13.)

26 In this motion, Plaintiff states that he wants exhibits stricken from the records and  
27 requests partial summary judgment. Like most of Plaintiff’s filings, the motion is wandering and  
28 difficult to decipher. He states that he has had arbitrary reclassification to conditions in ESP as

1 part of a reprisal campaign against him. He goes on to assert that once treatment has been  
2 prescribed by a specialist, a general practitioner violates the constitution by depriving a patient of  
3 prescription medications knowing it could cause wanton infliction of pain. He contends that  
4 supervisory liability does not require a showing that the supervising defendants had actual  
5 knowledge of foreseeable consequences of the offending behavior. He then states that he seeks a  
6 declaration of judgment from the court that his retaliatory transfer from medium closed custody  
7 to medium-maximum custody then to supermax custody violates the Constitution.

8 Next, Plaintiff discusses his claim against Dr. Koehn, asserting that on February 2, 2011,  
9 Dr. Koehn threatened to discontinue Plaintiff's prescribed care if he kept "playing attorney." He  
10 states that Dr. Koehn determined Plaintiff was mentally incapable of self-administration. He  
11 asserts that Dr. Koehn discontinued his medications against in April 2013, violating NDOC  
12 policies.

13 Plaintiff then appears to contest the exhibits filed in support of Defendants' motion for  
14 summary judgment as unauthenticated. He then repeats some of his earlier arguments, and  
15 claims his medical records were doctored.

## 16 **II. DISCUSSION**

17 First, to the extent Plaintiff seeks an order striking the exhibits filed in support of  
18 Defendants' motion for summary judgment as unauthenticated, that request should be denied as  
19 Defendants' properly authenticated all exhibits in support of their motion.

20 Next, insofar as Plaintiff asks for partial judgment in his favor, he has not met his burden  
21 under Rule 56. Namely, he has not clearly identified which claim he moves for judgment on, nor  
22 has he supported his arguments with citation to particular parts of materials in the record  
23 showing that a fact cannot be or is genuinely disputed. Fed. R. Civ. P. 56(a), (c)(1)(A)-(B), (e).  
24 This motion is more akin to a second sur-reply in response to Defendants' motion for summary  
25 judgment, which is not contemplated by the Local Rules. *See* LR 7-2(a)-(c).

26 In sum, the court recommends that this motion be denied.

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**III. RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the District Judge enter an order **DENYING** Plaintiff's Motion to Have Exhibits Struck, Pretrial Memorandum & § 1623 Request for Partial Judgment (Doc. # 102).

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

DATED: June 29, 2015.

  
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WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE